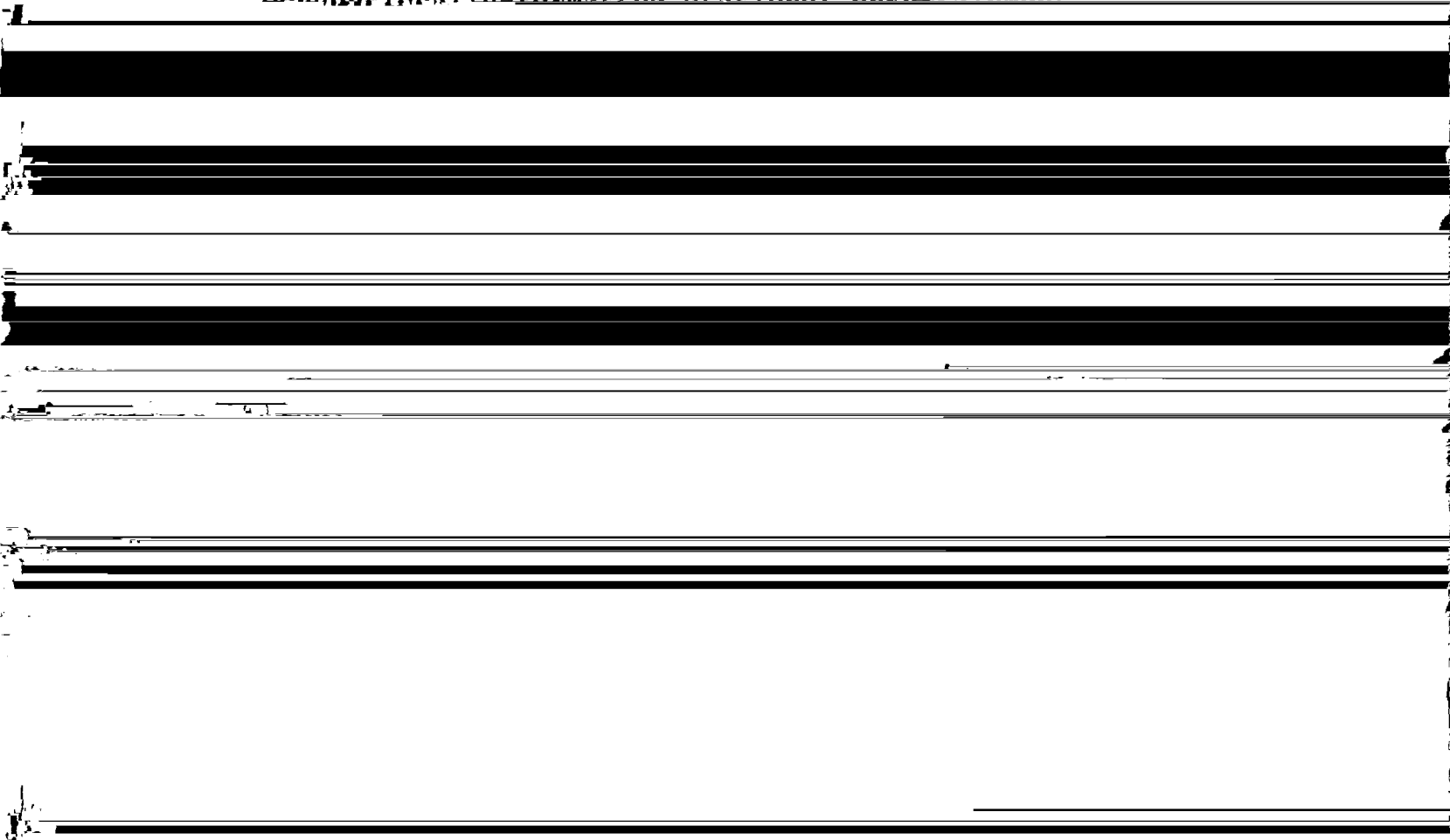


In sum, the Commission and the courts have repeatedly found that the SKC Stations are serving the public interest. They have specifically reviewed their home shopping entertainment format and their public service programming and have concluded that both are consistent with the public interest.^{29/} The continuing validity of these past determinations is confirmed by the facts set forth herein.

**The SKC Stations' Programming Comports
With All Commission Public Interest Requirements**

Section 4(g) of the 1992 Cable Act focuses exclusively on stations' home shopping programming. Home shopping programming is the functional equivalent of more conventionally formatted stations' entertainment



who then sells to viewers. The SKC Stations' programming simply eliminates the middle step of selling directly to advertisers.) Moreover, as entertainment, home shopping programming is no less objectionable -- or less entitled to First Amendment protection -- than the quiz shows, reruns of old movies, sexually-oriented talk shows, violent drama, detective series and risque comedy programs which comprise the bulk of entertainment on contemporary television.^{30/}

The home shopping format, while unconventional, is as demonstrated above, precisely what the Commission contemplated when deregulating stations' commercial practices.^{31/} No television station had aired such programming before HSN introduced the format. Indeed, HSN's entertainment format introduced the first practical application of interactive television. Never before had a broadcaster sought to use the airwaves to facilitate

^{30/} Members of the Commission have repeatedly criticized the violent and sexually-oriented content of conventional contemporary television. See, e.g., Notice of Proposed

interaction between viewers and the programmer. This pioneering effort could well be the forerunner of additional applications of interactive television.

HSN took the risk that the marketplace would accept such interactive programming and this has proven to be the case: the SKC Station Attachments indicate that Home Shopping Club membership within each station's market ranges from 7% to over 15% of television households, and because the Home Shopping Club has many more viewers than purchasers, it is clear that there is a substantial audience for this programming. The Commission should not now effectively reverse its decisions to rely on marketplace forces to control entertainment format and programming selection by arbitrarily penalizing one type of format.

Home shopping programming is innovative entertainment, which has been affirmatively encouraged by the Commission. The fact that it is different does not, however, deprive it of the right to enjoy the same regulatory status as other more traditional forms of entertainment programming. The SKC Stations adhere to their public service programming obligations in the same manner as stations having traditional entertainment formats; they also should be treated for all regulatory purposes in the same

manner as stations having traditional entertainment formats.^{32/}

The appropriate concentration in this proceeding is thus on stations' non-entertainment public service programming, not their entertainment programming, for that is the Congressionally-established and judicially-recognized touchstone for the public interest, convenience and necessity.^{33/} There is nothing inherently incompatible with being an HSN affiliate and complying in all respects with statutory and regulatory public interest requirements. Indeed, review of the SKC Stations' public service programming under even the most stringent standards clearly demonstrates operation consistent with the public interest.

^{32/} Because of the sensitive First Amendment concerns involved as well as the marketplace's efficacy in facilitating diversity, the Commission does not regulate stations' selection of entertainment programming. See, e.g., Policy Statement on Entertainment Formats of Broadcast Stations, 60 FCC 2d 858, 861, 863 (1976), aff'd sub nom., FCC v. WNCN Listeners Guild, 450 U.S. 582; Sonderling Broadcasting Corp., 62 FCC 2d 303, 306-307 (1977); KCOP Television, Inc., 59 FCC 2d 1321 (1976), recon. denied, 62 FCC 2d 93 (1977), aff'd sub. nom., National Ass'n for Better Broadcasting v. FCC, 591 F.2d 812 (D.C. Cir. 1978). Commission application forms, for example, make no inquiry concerning stations' proposed entertainment formats.

^{33/} See cases cited supra note 8; Television Deregulation, 98 FCC 2d at 1093-94 ["...the obligation of a licensee in this context is to contribute to the overall information flow in its market....The basic responsibility to contribute to the overall discussion of issues confronting the community is a non-delegable duty for which each licensee will be held individually accountable."].

Ascertainment. Notwithstanding the Commission's deregulation of ascertainment and public service programming,^{34/} all SKC owned and operated stations are diligent in ascertaining issues of concern to their communities. All such stations have adopted specific procedures designed to keep management and programming personnel currently apprised of community issues. More particularly, each station maintains on-going contacts^{35/} with community leaders from a broad spectrum of local organizations and interests, representing all 19 of the Commission's former community leader categories^{36/} and including members of minority groups and women.^{37/}

These ascertainment efforts provide the foundation for developing the SKC Stations' issue-responsive programming. Programming meetings are held weekly involving station Program Managers and staff to determine which

^{34/} See Television Deregulation, 98 FCC 2d 1076.

^{35/} Such contacts include in-person interviews, staff participation in community functions and telephone calls.

^{36/} See First Report and Order, Docket No. 19715, 57 FCC 2d 418 (1975), recon. denied, 61 FCC 2d 1 (1976).

^{37/} In addition to such contacts, station announcements invite members of the general public to contact stations regarding issues which they believe should be addressed in programming. Further, each station's staff and management almost uniformly reside within its service area and are active participants in community organizations and activities, ensuring a personal interest in significant community issues.

community issues warrant treatment and how best to approach them, procedures which ensure that station programming will be optimally responsive to significant community issues. These procedures' effectiveness is established by review of the stations' programming.

Public Service Programming -- Quantitative

Considerations. Recognizing the unique and innovative nature of its entertainment programming, HSN and SKC have continually required their stations' non-entertainment programming to comply in all respects with recognized Commission standards with respect to such programming. Under the Commission's former non-entertainment programming processing guidelines,^{38/} full Commission review was required of any commercial television station renewal application reflecting less than 5% local programming; 5% informational (news and public affairs) programming; or 10% total non-entertainment programming. Although those guidelines were subsequently eliminated for UHF stations not affiliated with one of the three major television

^{38/} The Commission has been loathe to prescribe quantitative non-entertainment programming standards. See, e.g., Standards for Substantial Program Service, 66 FCC 2d 419 (1977), aff'd sub nom., National Black Media Coalition v. FCC, 589 F.2d 578 (D.C. Cir. 1978); Program Categories, 82 FCC 2d 130 (1980), recon. denied, 88 FCC 2d 1188 (1982). The Commission's former processing guidelines thus afford the only available quantitative gauge of programming sufficient to satisfy the public interest.

networks,^{39/} the SKC owned and operated stations continue to exceed them, airing the following amounts of non-entertainment programming:

	<u>SKC Stations</u>	<u>Former Guidelines</u>
Local Programming	7.6%	5%
Informational Programming (News/Public Affairs)	7.6%	5%
Total Non-Entertainment Programming	10.2%	10%

Not only does the SKC Stations' quantitative non-entertainment program performance substantially exceed the Commission's former (and only) quantitative public interest programming standard: it meets or exceeds comparable performance of similarly situated market stations in virtually all categories. The SKC Station Attachments include general comparisons of the SKC Stations' non-entertainment programming schedules with those of other market UHF stations not affiliated with a major television network and demonstrate that the SKC Stations consistently provide more non-entertainment and more locally produced programming than the majority of other similarly situated

stations' non-entertainment programming -- the key determinant of operation in the public interest -- is far superior to that of other market stations whose entertainment format is more conventional.

"In Your Interest." The SKC Stations' principal public affairs program is "In Your Interest" ["IYI"], a four and one-half minute locally-produced program which is aired once each hour, every day, seven days a week (except when other non-entertainment programming is aired). Although some issues are treated in a single program, many are covered in multi-part series, each segment of which, however, can stand alone for interest and for content.

IYI's four and one-half minute length was designed to be long enough for a detailed, informative discussion of local issues, yet short enough to hold viewers' attention. The shorter format ensures that audiences, which might not be willing to concentrate on a longer program, do not lose interest and thus receive the full benefit of the program's content. Moreover, IYI's carriage throughout the day and the full broadcast week ensures maximum exposure to all viewers. For example, those persons who work and can only watch during evening and weekend hours are assured of the same access to the program as those persons who watch during daytime hours. In other words, unlike a situation in which public affairs programs are relegated to a single fixed

weekly time slot, IYI is available to all viewers, all the time, whether at mid-morning, mid-afternoon, prime time or midnight to 6 a.m. This unique around-the-clock availability of a significant public affairs program is an unprecedented approach to maximizing the effectiveness, exposure and impact of public service programming.

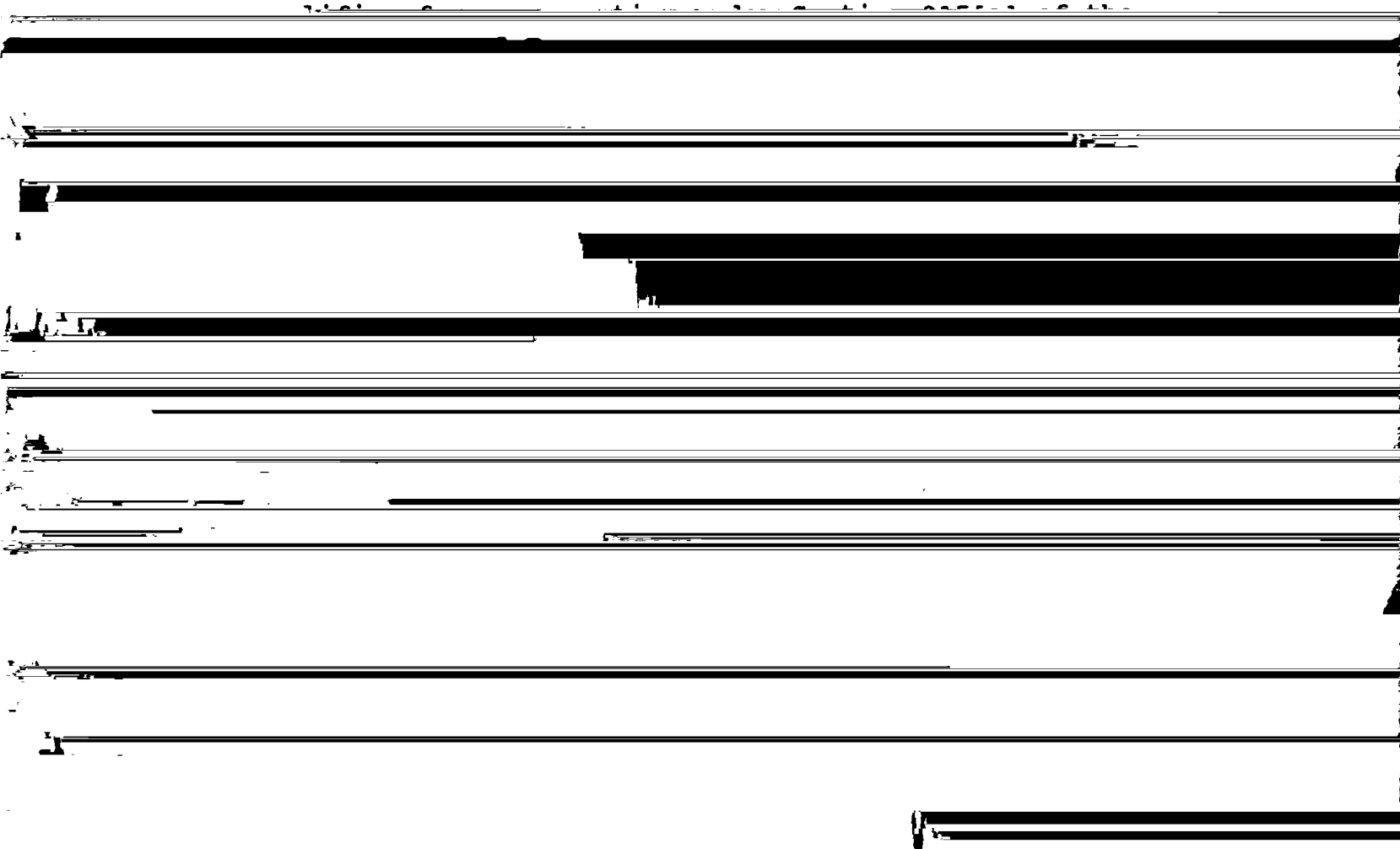
Although IYI's short format affords a uniquely effective means of maximizing audience exposure to issue-responsive programming, in early 1990 many SKC owned and operated stations sought to enhance their local public service programming by producing IYI in a 30-minute format. Thus, although each SKC station continues to air short-form IYI's hourly, 24 hours per day, most SKC stations also carry a one-half hour locally-produced IYI program each Sunday morning.

IYI's flexible format may include interviews with experts and community leaders, discussions, demonstrations and man-on-the-street or similar interviews designed to elicit local opinions, depending upon the approach optimally suited to the particular issue. The SKC Station Attachments describe the issues treated by each station's IYI between January 1, 1990 and September 30, 1992 and include partial lists of the guests who appeared on the programs.^{41/} Even

^{41/} Exhibit No. 1 provides a brief analysis of numbers of issues, guests and governmental officials who appeared on
(continued...)

a cursory review of this information clearly establishes the breadth and depth of the issues which have been explored and the variety and expertise of the guests who have appeared.

Thus issues which IYI has explored range from AIDS to gang violence and from problems relating to solid waste to interviews with newsmakers on topics of immediate interest. IYI has presented debates among political candidates, coverage of election returns and interviews of elected officials, all in furtherance of the quintessential public service goal of facilitating an informed electorate.^{42/} Indeed, IYI has been recognized by the Commission as a bona fide news interview program which



Guests have included experts in fields as diverse as medicine and agriculture, the environment and technology, education and sports. Local governmental officials have regularly appeared on the program. The SKC Station Attachments demonstrate the large number of local officials who have appeared on IYI.

That IYI is locally produced to be specifically responsive to uniquely local issues is evidenced by the specifically local variations of IYI reflected in the SKC Station Attachments.^{44/} For example, WHSP-TV regularly airs IYI series featuring a representative of the Social Security Administration providing useful information concerning Social Security benefits and requirements. Stations WBHS-TV, WHSW-TV, KSHS-TV and KHSX-TV devote regularly-scheduled IYI series to providing information concerning current activities of local community organizations. Station WSHS-TV also devoted a series of IYI's to exploring specific problems of individual communities within its service area. In other words, IYI is specifically responsive to local community issues.

Other Public Service Programs; Religious

stations' primary public service program, it is not the only one. Each station devotes four hours each Sunday morning to the presentation of other non-entertainment programming, including a variety of religious, ethnic and public affairs programming and children's educational programming. Such programming has included:

- "Congressman Mike Bilirakis Reports," a weekly report from U.S. Congressman Mike Bilirakis locally-produced by Station WBHS-TV;
- Hourly news updates during the Persian Gulf War;
- Live local election coverage;
- A Hurricane Andrew Relief Telethon;
- Local community holiday programs;
- Local "Celebration" campaigns -- an annual commitment during which all local programming and PSA's in an entire week are devoted to encouraging a drug- and alcohol-free prom and graduation season;
- Hourly weather updates;
- Telethons to raise money for a drug rehabilitation program, including participation from Presidents Reagan and Bush and other elected and community officials;
- Regularly-scheduled local newscasts (Stations WEHS-TV and WSHS-TV);
- "The Greek Spirit," a program locally-produced by WHSP-TV which presented news concerning the local Greek community and other information in both Greek and English; WYHS-TV also aired "Greek Panorama," a one-hour program addressing concerns of the Orthodox Greek community;
- Programs concerning Islamic and Persian culture aired by Television Stations KHSB-TV, KHSX-TV and WSHS-TV;

- WEHS-TV broadcast half-hour programs concerning hospices; the story of a quadriplegic; health education in developing nations; and the health hazards of smoking;
- KHSX-TV broadcast the Arthritis Telethon;
- WYHS-TV broadcast "Tele-Haitienne," a series dealing with issues of concern to Haitian immigrants;
- WSHS-TV broadcast "On the Street with Willie Jackson," a series which addressed the issue of homelessness;
- KHSX-TV broadcast "America's Black Forum," a weekly half-hour public affairs program which focused on issues of importance to the Black community; and
- WBHS-TV has been a moving force in Tampa's "Paint Your Heart Out" Project, a yearly, major public-private community project.

SKC's commitment to community service was recently evidenced by WHSE-TV's response to the World Trade Center bombing on February 26, 1993. The explosion forced all but one major network station and most of the city's commercial independent television stations off the air. WHSE-TV, whose transmitter is located on the Empire State Building, remained on the air, although its news source, UPI, was initially knocked out of service.

Once the scope of the emergency was ascertained, WHSE-TV aired a five minute local live news update at 3:20 p.m. In response to requests from WNBC-TV and WABC-TV, WHSE-TV preempted its regular programming at 3:50 p.m. to provide a live local update and then switched to WABC-TV for

a ten minute feed. Between 4 and 8 p.m., WHSE-TV preempted IYI to alternate live local news from WNBC-TV and WABC-TV, and provided additional news and information. A schedule of emergency informational updates is attached as Exhibit No.

2. After 8 p.m., when most New York City television stations resumed regular service, WHSE-TV continued to provide crisis telephone numbers via a crawl throughout Friday evening until Saturday night. WHSE-TV's home shopping entertainment format did not prevent the station from rendering full public service in a time of emergency. In fact, WHSE-TV's service to the community was recognized by WABC-TV's Program Director who included a note of thanks to WHSE-TV with his letter providing WHSE-TV retransmission consent. See Exhibit No. 3.

The SKC Stations also have carried extensive amounts of religious programming. Religious programming

"Coral Ridge Ministries;" "Larry Jones Ministries;" "Ever Increasing Faith;" "Christian Magazine;" "Christopher Close Up;" "Mother Basilea;" and "What Catholics Believe." In other words, the SKC Stations have addressed their communities' concerns with the quality of life and the need for moral values in society through significant religious programming.

Public Service Announcements. The SKC Stations also have provided airtime to publicize the activities and concerns of local, regional and national non-profit organizations. In particular, they have carried substantial numbers of public service announcements for such organizations on a regular basis throughout the broadcast day.^{45/} The SKC Station Attachments list organizations on whose behalf the SKC Stations broadcast PSA's between January 1, 1990, and September 30, 1992, and demonstrate that they facilitated public awareness of a vast range of community issues and concerns.^{46/}

^{45/} The Commission has recognized the public service contribution of PSA's. See, e.g., Television Deregulation, 98 FCC 2d at 1092 n.54.

^{46/} In addition, as noted above, several of the SKC Stations utilize IYI to publicize local organizations' activities (e.g., "Community Calendar" on WBHS-TV). Also, Station WHSH-TV airs 30-second locally produced "New England Notes" which provide information concerning the activities of local community organizations.

Awards. The SKC Stations' service to their communities has been confirmed and recognized through numerous awards and commendations. The SKC Station Attachments list representative awards and again demonstrate the communities' extraordinarily high regard for the SKC Stations' community service through programming.

This record clearly establishes that the SKC owned and operated stations have completely fulfilled their "...obligation to provide programming that is responsive to the issues confronting [their] communit[ies]." Television Deregulation, 98 FCC 2d at 1091-92.

Children's Programming The Children's Television

- "Vegetable Soup" -- This series, designed for children ages 5-12, is designed to help counter the negative, destructive effects of racial prejudice. Positive role models from a variety of racial and ethnic backgrounds appear, including Ricardo Montalban, Maria Tallchief, Angel Cordero and Pat Suzuki. "Vegetable Soup" has won numerous educational awards.
- "Getting to Know Me" -- This series, designed for children ages 9-15, promotes pride in one's heritage. Taking viewers into the South to meet a contemporary Black family, the programs emphasize understanding one's roots. One program in the series has been awarded a Medal for Excellence.
- "Bean Sprouts" -- This series, designed for children ages 7-12, deals with Chinese-American heritage melding into mainstream culture.
- "Carrascolendas" -- This series, designed for children ages 4-9 and presented in both English and Spanish, focuses on the lesson that each person is something special. The series has won numerous awards for educational programming excellence.
- "Pacific Bridges" -- This series, designed for children ages 8-12, emphasizes the Asian-American contribution to the United States' growth and development.
- "Mundo Real" -- This series, designed for children ages 7-12, describes the minority experience as seen through the eyes of a fictitious Puerto Rican family.
- "People of the First Light" -- This award-winning series, designed for children ages nine and older, seeks to promote understanding and appreciation of various Native American tribes' cultures.
- "Reflections" -- This series about Puerto Rican history and culture addresses pride in one's heritage, self-esteem, coping skills and cultural richness. One program received a Silver Screen Award.

- "Villa Allegre" -- This series seeks to teach young children how to cope with problems of everyday life.
- "Musical Encounters" -- This series teaches young people about music appreciation.

Additionally, an experimental association with producers from Good Company, Inc. resulted in the broadcast of five original children's programs on WEHS-TV. In addition, as reflected in the SKC Station Attachments, the SKC Stations have aired a variety of children's specials as well as IYI segments for adults dealing with children's issues.

In short, long before it was required, the SKC Stations recognized a particular commitment to children and fulfilled that commitment through the regular weekly

[REDACTED]

the SKC Station Attachments that assumption is, simply stated, wrong.

The SKC Stations' programming is the product of "a great deal of time and effort and planning to meet the public needs of a community." The programming has dealt with substantial issues of significant public interest, emphasizing "local features on the local community;" it has included regular local weather reports and in some instances regular local news reports; it has included local coverage of current events within a community; and it has included "access and time to charitable organizations within the community to try and promote events in the local community."^{49/} As to quantity, the SKC Stations have presented far more than a single hour per day of public service programming, and, in fact, the SKC Stations' quantitative public service programming performance compares favorably to or substantially exceeds that of most other traditionally-formatted stations not affiliated with a national network. See Exhibit No. 4. In short, the SKC

^{48/} (...continued)
program content. The textual comments are offered only to expose the constitutionally impermissible and misplaced factual assumptions about the amount and nature of the issues covered by IYI, and do not suggest SKC's acceptance of any governmental evaluation of the merits of particular program content.

^{49/} Id.

Stations have fully complied with Congressional conceptions of what constitutes service in the public interest.

**The SKC Stations' Minority Employment Record
Confirms their Operation in the Public Interest**

Reflecting the Commission-recognized connection between equal employment opportunities and optimally responsive programming,^{50/} the SKC Stations are each deeply committed to equal employment opportunity. Reflecting that commitment, each station has adopted and actively implements an aggressive, effective EEO Program.

Each SKC Station has consistently met or substantially exceeded the Commission's EEO Processing Guidelines.^{51/} In many instances, minority and/or female employment exceeds full parity with workforce representation.^{52/} Of the stations' Vice Presidents and Station Managers, 36.3% were women and 18.1% were minorities. Of the stations' Program Managers, 75% were

women and 25% were minorities. SKC believes that there is not another major television group owner with a more impressive record of minority and female employment.

**Denying Mandatory Carriage Rights to Stations
with Home Shopping Formats would have a
Devastating Impact on Minority-Owned Stations**

Congress and this Commission have repeatedly emphasized their concern with minority ownership of the media and have taken steps designed to encourage such ownership.^{53/} Reflecting its full support of these Congressional goals, HSN and now SKC have done more than any single broadcast owner to further minority station ownership. At present, for example, HSN is affiliated with 30% of all minority-owned television stations in the country.^{54/} Action in this proceeding which disqualifies those stations from must-carry eligibility would have a major adverse impact on minority television station

^{53/} See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982); Making Further Continuing Appropriations for Fiscal Year 1988 and for Other Purposes, Pub. L. 100-202 (December 22, 1987); 47 U.S.C. § 309(i)(3)(A) (1988); see also Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990).

^{54/} According to NTIA, there are 19 Black-owned television stations in the United States, seven owned by Asians and seven owned by Hispanics. National Telecommunications and Information Administration, "A Statistical Analysis of Minority-Owned Commercial Broadcast Stations Licensed in the United States in 1992" (November 20, 1992). Seven of the Black-owned stations, two of the Asian-owned stations and one of the Hispanic-owned stations are affiliated with HSN.

ownership, a result directly in conflict with 25 years of affirmative regulatory policy.

Beginning in 1986, when it acquired its first station, HSN resolved to make affirmative efforts to expand the pool of minority-owned television stations, not only because it was a wise business investment, but also because it was the right thing to do. Since that time, HSN has funded the acquisition or construction of seven minority-owned television stations and has furthered the development of others through its affiliation agreements.

Through a \$5 million capital investment, HSN enabled Blackstar Communications, Inc. ["Blackstar"] to acquire three major market television stations: Television Station WBSF, Channel 43, Melbourne (Orlando), Florida; Television Station WBSP, Channel 22, Salem (Portland), Oregon; and WBSX, Channel 31, Ann Arbor (Detroit), Michigan. Blackstar is now one of the largest minority-controlled group station owners in the country.

Roberts Broadcasting Company ["Roberts"] applied for a construction permit for a new station on Channel 46 in East St. Louis, Illinois, in 1981, and after a long comparative hearing was awarded the permit in 1987. The company, however, experienced difficulty in obtaining financing and faced surrender of the construction permit. Then, in 1989, HSN provided a loan in excess of \$3.8 million

to fund the construction of Roberts Broadcasting Company's Television Station, WHSL-TV, East St. Louis, Illinois. WHSL-TV signed on in September, 1989, as the first new television station in the St. Louis market in 20 years. As the result of HSN's participation, WHSL-TV has provided new jobs and opportunities for the St. Louis community.

Jovon Broadcasting Corporation ["Jovon"] was awarded a construction permit for Channel 62, Hammond, Indiana, in 1986. Like Roberts, however, it encountered severe difficulties in obtaining financing. In 1990, HSN loaned \$3.6 million to Jovon for construction of Television Station WJYS-TV (serving the Chicago market). That station began operations on March 3, 1991. The licensee's President and controlling shareholder has told the Senate, "WJYS-TV would not be on the air today...if Home Shopping Network had not financed and programmed the station."

Also in 1990, HSN entered into an agreement with Urban Broadcasting Corporation ["Urban"] to fund the construction of its new television station, WTMW, Channel 14, Arlington, Virginia. HSN has committed over \$8.5 million dollars to this project and it is anticipated that this new television station -- the first Black-owned commercial television station in the nation's capital -- will be on the air this year.

These stations' minority owners -- Roberts Broadcasting Company, Jovon Broadcasting Corporation and Urban Broadcasting Corporation -- had been awarded construction permits after years of litigation, but were unable to obtain financing to build their stations. Without

Pan Pacific Television, Inc.
Television Station KPST-TV, Vallejo, California

Fouce Amusement Enterprises, Inc.
Television Station KRCA-TV, Riverside, California

The HSN home shopping format enabled such minority-owned stations to begin or continue operations.^{55/} Forcing such stations to adopt a new, more conventional format would almost certainly cause their failure. For example, as Congressman Ed Towns stated in a letter of April 6, 1992, to Congressman Carlos Moorhead:

I would urge you to oppose any restrictive amendment which would deny HSN stations carriage because of the dire consequences it would have for minority-owned stations.

Similarly, Parren J. Mitchell, Chairman of the Minority Business Enterprise Legal Defense and Education Fund, Inc., stated in a letter of July 17, 1992, to Chairman John D. Dingell of the House Committee on Energy and Commerce:

Congressman Ritter's provision [denying mandatory must-carry to home shopping stations] will deny 1/3 of the Black owned television stations the 'must-carry' status afforded all other full power TV stations simply because of their affiliation with HSN. These Black station owners are accused of not providing their communities with public interest and public affairs programming. I have been advised by several of the Black owners of HSN affiliated stations that the charges against them

^{55/} As Carmen Ponce-Nicasio Briggs, President and owner of Ponce-Nicasio Broadcasting, Inc. stated to the Senate, "The FCC gave us 'life', but HSN programming gave us the 'bread' to meet our daily operating expenses allowing us to retain ownership....[HSN programming] was our economic salvation."